THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No. 16434 of 2006

% 09-08-2006

Smt A. Savitri.

Vs.

$ The District Collector-cum-District Election Authority, Kadapa and others.

…. Respondents

!Counsel for the Petitioner: Sri Y. Ashok Raj.

Counsel for the Respondents 1 to 3: Sri V.V.Prabhakara Rao.

Counsel for the Respondent No.4: Sri K.R.Prabhakar.

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>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No. 16434 of 2006

DATED: 09-08-2006

Between:

Smt A. Savitri.

..Petitioner.

and

The District Collector-cum-District Election Authority, Kadapa and others.

..Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16434 of 2006

ORDER:

Heard Sri Y. Ashok Raj, the counsel representing the petitioner, Sri V.V.Prabhakara Rao, the counsel representing respondent Nos.1 to 3 and Sri K.R. Prabhakar, the counsel representing R4.

2. This writ petition is filed for a writ of mandamus declaring the action of the 3rd respondent in issuing a certificate of declaration in favour of 4th respondent, after issuing a certificate of declaration in favour of the petitioner for the post of Sarpanch, Rangasamudram Gram Panchayat, Porumamilla Mandal, Kadapa District in the election held on 02-08-2006 as illegal, arbitrary and against the principles of natural justice and direct the official respondents to recount the votes polled for the said post in the election held on 02-08-2006 forthwith and pass such other suitable orders.

3. On 07-08-2006 Sri V.V.Prabhakar Rao had taken notice and requested time to get instructions and status quo was granted for a limited period. Sri V.V. Prabhakar Rao also filed counter affidavit on behalf of the 3rd respondent and also placed before this Court Form Nos.26 and 29 and the representation made by the Returning Officer-3rd respondent to the District Collector.

4. This is a case where it is stated that the 3rd respondent issued two certificates both in favour of the writ petitioner and also the 4th respondent.

5. It is stated in the affidavit filed in support of the writ petition that the petitioner is a resident of Rangasamudram Village of Porumamilla Mandal, Kadapa District and she had contested in Rangasamudram Gram Panchayat elections for the post of Sarpanch, held on 02-08-2006. It is also stated that all together

12 members had contested for the post of Sarpanch and the 4th respondent herein is the main contender in the aforesaid elections. It is also stated that the counting of votes was held on the same day at 3-00 PM in two halls at M.P.Elementary School building. It is further stated that finally, the petitioner was declared by 4 votes majority at around 7-00 PM by the 3rd respondent and to that effect he had issued a certificate in Form No.29. It is also stated that while the matter stood thus, the supporters of the 4th respondent with the support of the Deputy Superintendent of Police, Mydukur came to the spot and held latti charge against the supporters of the writ petitioner who were enjoying the victory in the election. It is also stated that the 4th respondent and her supporters high-handedly pressurized 3rd respondent to issue a Certificate of Election in favour of the 4th respondent. Several other factual details also had been narrated and it was stated that a written representation was made to the 3rd respondent to hold recount of the votes, but the 3rd respondent refused to receive the same. It is also stated that the petitioner submitted another detailed representation to 1st respondent requesting to cancel the certificate issued in favour of 4th respondent as the said certificate had obtained under pressure and for recounting the votes. In the said circumstances, it is stated that the writ petitioner approached this Court praying for the appropriate relief.

6. In the counter affidavit filed by the 3rd respondent, several factual details are narrated. It is needless to say that the 3rd respondent is the Returning Officer. It is stated that the State Election Commission issued election notification on 09-07-2006 for conducting elections to the Gram Panchayats through out the State of Andhra Pradesh. Pursuant to the above notification, the District Collectors of the State issued notification on 15-07-2006 notifying the Gram Panchayats. The details of the schedule also had been narrated. It is also stated that the District Collector-cum-Election Authority, Kadapa District, appointed the 3rd respondent as Election Officer for Rangasamudram Gram Panchayat, Porumamilla Mandal, Kadapa District and he had acted as Election Officer for Stage-II. The elections for the said Gram Panchayat were scheduled on 02-08-2006. It is stated that there are 12 candidates contesting for the post of Sarpanch. The polling time fixed by the State Election Commission was between 7-00 AM to 1-00 PM, counting time was fixed as 2-00 PM onwards and the results would be declared soon after completion of the counting. In respect of ward members, the particulars and details need not be mentioned and the present dispute is only with regard to the post of Sarpanch. It is stated that the petitioner contested to the post of Sarpanch with an election symbol “Flute” and the 4th respondent contested to the post of Sarpanch with a symbol of “Post Box”. The counting of votes for the post of Sarpanch was at 6.30 PM on 02-08-2006. As per the counting, Smt Cherukuri Suma, the 4th respondent herein, secured 1524 votes, whereas Smt A. Savithri, the petitioner, secured 1520 votes, whereby, the 4th respondent was declared as elected to the post of Sarpanch as per Form No.26. Thereafter, the 3rd respondent issued a Certificate of Election in Form No.29 at 7-00 P.M. declaring that the 4th respondent was duly elected as Sarpanch of the aforesaid Gram Panchayat. It is also stated that after the results were declared, the 4th respondent and her followers left the polling station, and the 3rd respondent and other election staff were making arrangements to put the election material in sealed covers. While matters stood thus, the writ petitioner came to the polling station along with the local MLA Sri D.C.Govinda Reddy and ZPTC member Sri P. Nagarjuna Reddy with their followers and surrounded them and threatened them with dire consequences until and unless the Returning Officer issued a Certificate of Election in Form No.29 to the defeated candidate i.e., the writ petitioner, also. It is stated that the 3rd respondent and others refused to give such certificate in favour of the writ petitioner and he had explained the entire situation to the writ petitioner, local MLA and their followers and in spite of the same, they kept them on threatening and refused to hear them and confined them to the polling station till 10-30 PM. It is also relevant to mention that in this connection the Deputy Superintendent of Police with

his subordinate officers was also present at the counting station and they became spectators and they also expressed their helplessness in the matter. Nearly 600 to 700 people had surrounded them and also surrounded the police. It is also stated that at about 10-30 PM on 02-08-2006, the 3rd respondent had no option except to give a Certificate of Election in Form No.29 to the writ petitioner also. It is also stated that if the 3rd respondent refused to give the same at 10-30 PM, it apprehended life danger to him and also other polling staff. It is specifically stated that as per the counting of votes, the 4th respondent secured 1524 votes, whereas the writ petitioner secured only 1520 votes. The Certificate of Election was issued by the 3rd respondent in favour of the writ petitioner is not permissible under law. It is also stated that on the next day i.e., on 03-08-2006 the 3rd respondent along with the Assistant Returning Officer made a representation to the 1st respondent narrating the circumstances and copies were sent to the District Panchayat Officer, Kadapa District and the Revenue Divisional Officer, Rajampet. It is also stated that the certificate issued by the 3rd respondent in favour of writ petitioner is neither willful nor intentional and it was only the situation beyond his control on that day. It is further stated that the District Collector, Kadapa, wrote a letter to the State Election Commission in Roc.No.1/A2/Election/2006 dated 03-08-3006 informing the State Election Commission of the facts and for further course of action. In turn, the State Election Commission in proceedings No.1743/SEC-B2/2006-II dated 04-08-2006 informed the District Collector by way of a Fax Message that the 4th respondent secured highest votes and the Election Certificate issued to her only is valid and subsequently the Election Certificate issued to the writ petitioner was under threat and intimidation and the same is not valid. Hence, it is stated that the writ petitioner did not approach this Court with clean hands.

7. Sri V.V.Prabhakar Rao, the learned Standing Counsel representing the State Election Commission in all fairness, would submit that there are no specific rules governing such a situation, but however, the learned counsel placed before this Court Form Nos. 26 and 29 and had pointed out to the votes actually polled in favour of the writ petitioner and also the 4th respondent. The learned counsel also would submit that on the basis of this material, the Writ Court in the peculiar situation may pass just and appropriate orders.

8. Sri K.R.Prabhakar, representing the 4th respondent also had pointed out under what circumstances the peculiar situation of issuing two certificates arose. However, Sri Ashok Raj, the learned counsel representing the writ petitioner disputed all these aspects and would contend that the stand taken by the writ petitioner is correct and in any event, if there is any other doubt, even at this stage, it would be just and proper to recount the votes.

9. This is a peculiar situation wherein the unfortunate Returning Officer, who was afraid of his life, was forced to issue a certificate. This Court has no hesitation at all to believe the version of the 3rd respondent, who had narrated all the details in his counter affidavit. It is really an unfortunate episode. To maintain healthy atmosphere, it is always necessary and essential that the conduct of elections should be free and fair. The use of muscle power and the threats posed to the Returning Officer in relation thereto definitely are to be deprecated. This Court is well satisfied that the official respondents had acted in order, in the light of the peculiar facts and circumstances and issued necessary and suitable instructions in this regard. This Court is not inclined to express any further opinion relating to the other factual controversies. In the event of the writ petitioner being aggrieved of all the other factual controversies, especially the stand taken by the 3rd respondent in the counter affidavit, liberty is given to her to approach the appropriate election Tribunal if she is so advised. But, however, in the light of the specific stand taken by the 3rd respondent in the counter affidavit, this Court is not inclined to interfere at this stage. It is needless to say that in the light of Form

Nos. 26 and 29, this Court is satisfied that for the present purpose, the 4th respondent to be declared as elected as Sarpanch of Rangasamudram Gram Panchayat, Porumamilla Mandal, Kadapa District.

Accordingly, the Writ Petition shall stand dismissed. No order as to costs.

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P.S.NARAYANA, J

Dated:09-08-2006

Note:
Issue CC by three days.
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